he even asked for double rents at twice this rate until possession was given. He would appear to think that the agreement though resiled and though not reduced into writing was sufficient to raise the fair rent to $125.

The President Sessions Court rejected a last minute suggestion that the claim was one under section 16(1)(j), paid strict regard to the pleadings as they stood and held firmly that on the statement of claim, the case for the landlord was under section 16(1)(a). He then came to the conclusion that the lawful rent was not $125 p.m., there had been no arrears of rents at this rate and he accordingly dismissed the claim, in our view, entirely correctly. He is entirely correct in deciding a case on the pleadings and the issues raised on them.

We accept the invitation of the High Court judge to over-rule his decision and we allow the appeal and restore the order of the President Sessions Court with costs here and in the courts below.

Appeal allowed.

Solicitors: *Sault & Co.; Gill & Tang.*

NATIONAL UNION OF COMMERCIAL WORKERS v. LINDETEVES-JACOBERG (M) SDN. BHD.

[F.C. (Suffian L.P., Chang Min Tat & Syed Othman F.JJ.) December 8, 1980 & January 15, 1981]
[Kuala Lumpur — Federal Court Civil Appeal No. 251 of 1979]

Administrative Law — Certiorari — Award of Industrial Court — No error of law affecting jurisdiction — Certiorari does not lie — Industrial Relations Act, 1967, s. 32(3)(a).

Industrial Law — Award of Industrial Court — No error of law affecting jurisdiction — Certiorari does not lie — Industrial Relations Act, 1967, s. 32(3)(a).

The respondents had retrenched some of their employees. The retrenchment was disputed by their Union and the dispute was reported to the Minister. The matter was eventually referred to the Industrial Court, which made their award, ordering reinstatement of the employees. The respondents applied to the High Court and obtained an order of *certiorari* quashing the award. In his judgment the learned judge said that the Industrial Court had erred in law and the error was apparent on the face of the record. The trade union appealed.

Held: in this case the Industrial Court had applied their mind to the proper question for the purpose of making their award; and had not asked themselves the wrong questions or taken into account matters which they should not have taken into account. Accordingly, they had not made an error of law which affected their jurisdiction and therefore their award could not have been quashed by *certiorari* proceedings.

Cases referred to:-

(1) *South-East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1980] 2 M.L.J. 165; [1980] 3 W.L.R. 318.

(2) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

(3) *Pearlman* v. *Harrow School* [1979] 1 Q.B. 56, 70.

The following cases were also cited in argument: *Selangor Omnibus Company Ltd.* v. *Transport Workers Union* [1967] 1 M.L.J. 280; *Sungei Wangi Estate* v. *Uni* [1975] 1 M.L.J. 136; *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia (No. 2)* [1975] 2 M.L.J. 175, 179; *Seereelall Jhuggroo* v. *Central Arbitration and Central Board* [1953] A.C. 151.

FEDERAL COURT.

D.P. Xavier for the appellants.

W.S.W. Davidson for the respondents.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): Cik Faridah binte Harun, Madam Tamishmathi d/o Kuppusamy and Miss Margaret De Cruz, typist, stenographer and typist respectively ("employees") employed by Lindeteves-Jacoberg (M) Sdn. Bhd., ("the company") were retrenched and received identically worded letters dated September 30, 1977, from the company saying that the company had to retrench them with effect from October 1, 1977, owing to a "serious downturn" in turnover and profits during the preceding years.

The retrenchment was disputed by their union, the respondents, and the dispute was reported to the Ministry but it could not be resolved. Eventually by letter dated November 19, 1977, the Minister for Labour and Manpower wrote to the President of the Industrial Court reporting that a dispute had arisen between the company and the union and referring the dispute to the Industrial Court under section 26(2) of the Industrial Relations Act, Act 177 ("the Act").

On November 11, 1978, the Industrial Court made their award, ordering reinstatement of all three employees.

On December 19 the company obtained leave to move the High Court for an order of *certiorari* to remove into the High Court the award of the Industrial Court for the purpose of its being quashed.

On August 30, 1979, the substantive motion was heard by Abdul Hamid J., as he then was, and in a reserved judgment delivered on December 6, he quashed the award, because, he said,

> "This court finds that the Industrial Court had erred in law and the error is apparent on the fact of the record."

The union appeals against that judgment.

That judgment had been delivered before the judgment of the Privy Council was delivered some six months later on June 24, 1980, in *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* ("Fire Bricks").[1]

The Privy Council there considered the effect of section 29(3)(a) of the Act (now section 32(3)(a)) which reads:

> "Subject to this Act, an award of the [Industrial] Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any court."

Several judges sitting singly in the High Court had held that the above provision did not prohibit them from quashing an award of the Industrial Court if it contained an error of law apparent on the face of the record.

But in *Fire Bricks*,[1] their Lordships held:

(1) that section 29(3)(a) did prohibit the High Court from quashing an award of the Industrial Court by *certiorari* proceedings, if it merely made an error of law on the face of the record which did not affect its jurisdiction;

and, following the House of Lords decision in *Anisminic Ltd.* v. *Foreign Compensation Commission,*[2] further held that:

(2) when words in a statute oust the power of the High Court to review decisions of an inferior tribunal by *certiorari,* they must be construed strictly;

(3) it has that power if the inferior tribunal has acted without jurisdiction or "if it has done something in the course of the inquiry which is of such a nature that its decision is a nullity" (*per* Lord Reid at page 171);

(4) but if the inferior tribunal has merely made an error of law which does not affect its jurisdiction, and if its decision is not a nullity for some reason such as breach of the rules of natural justice, then the ouster will be effective; and

(5) the suggestion by Lord Denning in *Pearlman* v. *Harrow School*[3] that the distinction between an error of law which affected jurisdiction (quashable) and one which did not (not quashable) should be discarded, was not accepted. The court can correct an error of law of the inferior tribunal if the tribunal acted in excess of its jurisdiction, as opposed to merely making an error of law in its judgment by misinterpreting the statute in question.

In *Fire Bricks,*[1] the union there called out their members in the appellants' factory on strike. The appellants issued notices to all their striking employees informing them that unless they returned to work within 48 hours their services were deemed to be terminated. On February 12, 1974, the Minister for Labour and Manpower referred the dispute to the Industrial Court under section 23(2) of the Act. On February 16, the striking employees sought to return to work on the advice of the union, but the appellants refused to allow them to return, maintaining that their employment had already been terminated and their places filled. The union maintained that the men were still employees of the appellants, and that the lock-out was illegal because the dispute had been referred to the Industrial Court. Thus the question was whether or not the men by going on strike had terminated their contracts of employment. The Industrial Court considered this question and ruled that they had not, and ordered the appellants to take them back as from the date of the lock-out.

Their Lordships of the Privy Council found that the dispute was one which the Minister had power to remit to the Industrial Court (under section 23(2)); that the Industrial Court applied their mind to the proper question for the purpose of making their award; that the award was accordingly within the jurisdiction of that court; that for present purposes their Lordships assumed, without deciding, that the award contained one or more errors of law upon its face; but if so, the errors did not affect the jurisdiction of the Industrial Court — as the court had addressed their mind to the proper question — and their Lordships were therefore of opinion that section 29(3)(a) of the Act (now section 32(3)(a)) effectively ousted the jurisdiction of the High Court to quash the decision by *certiorari* proceedings.

In *Anisminic,*[2] the plaintiffs, an English company, owned property in Egypt which was sequestered by the Egyptian authorities following the Suez Incident. In 1957 the plaintiffs sold the sequestered property to an Egyptian organization, T.E.D.O. In 1959 the plaintiffs made an application for compensation to the Foreign Compensation Commission claiming that they were entitled to participate in the Egyptian Compensation Fund in respect of their sequestered property. The Commission construed the provision under which they were acting as requiring them to enquire, when the applicant was himself the original owner, as was the case here, whether he had a successor in title. Their Lordships did not think that the provision did so require. The Commission made that enquiry and held that T.E.D.O. was the applicant's successor in title, and as T.E.D.O. was not a British subject, the Commission rejected the appellant's claim. Their Lordships held that the court had in the circumstances power to quash the decision of the Commission, notwithstanding section 4(4) of the Foreign Compensation Act, 1950, which provided:

"The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law."

The word "determination", it was held, did not include everything which purported to be a determination but was not in fact a determination because the Commission had misconstrued the order defining their jurisdiction.

At page 171 Lord Reid said:

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity.... But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it had done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

In view of *Fire Bricks,*[1] Encik Davidson for the company conceded that the High Court has no power to quash, as it has done, the award of the Industrial Court on the ground that the latter have made an error of law apparent on the record. But he sought to uphold the learned judge's decision by arguing that, although the Industrial Court had jurisdiction to enter on the inquiry, their decision was a nullity on the ground that, unlike in *Fire Bricks*[1] where they applied their mind to the proper question for the purpose of making their award (the question being whether or not by going on strike the workers there have terminated their contracts of employment), in the instant case they had not, but instead decided some questions not remitted to them; that in making their award they

had not asked themselves the right question; and that they took into account matters that they had no right to take into account. Because of all this, it was argued that they had made an error of law which affected their jurisdiction, and accordingly it was within the power of the learned judge to quash their award by *certiorari* proceedings.

With respect we do not agree.

What was the question before the Industrial Court?

It will be observed that the Minister's letter to the President of the Industrial Court was in general terms and did not specify the questions on which a decision of the Industrial Court was required — as has to be done in India.

In their written statement of case before the Industrial Court the union contended that the purported retrenchment was not *bona fide* and that the company had breached the rule "last in, first out".

In their written statement in reply to the Industrial Court, the company denied that the retrenchment was not *bona fide*, contended that in respect of the first and third employees they had followed the rule "last in, first out", that in respect of the second they were justified in retrenching her, and prayed that the court uphold the retrenchment.

Thus the question before the Industrial Court was a straightforward one: was the retrenchment *bona fide* or not?

The Industrial Court recognized that retrenchment was a matter for management. Management sought to justify it on the ground of economics, that turnover and profits were down, and in view of expenses at head office in Amsterdam, expenses on office maintenance, and bad debts, they had to reduce staff, and they had no alternative but to retrench the three employees.

In the event the Industrial Court came to the conclusion that the "retrenchment exercise was ... in the circumstances not proper".

In doing so, we think that the Industrial Court had applied their mind to the proper question for the purpose of making their award; and had not asked themselves the wrong questions and taken into account matters which they should not have taken into account. Accordingly, in our judgment, they had not made an error of law which affected their jurisdiction, and therefore their award could not have been quashed by *certiorari* proceedings.

For the above reasons, we would allow the appeal, set aside the order of the learned judge, and restore the award of the Industrial Court.

The company to pay costs here and below.

Appeal allowed.

Solicitors: *D.P. Xavier & Co.; Lewis & Co.*

SUM KUM SENG v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Chang Min Tat & Abdul Hamid F.JJ.) December 9, 1980 & January 15, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 36 of 1980]

Criminal Law and Procedure — Charge of having under control fire arms — Accused admitting burying weapons and offering to show place to police — Admissibility of evidence — No evidence of actual words used by accused — Evidence in indirect speech — Evidence Act, 1950, s. 27 — Internal Security Act, s. 57(1).

Evidence — Charge of having under control fire arms — Accused admitting burying weapons and offering to show place to police — No evidence of actual words used by accused — Evidence in indirect speech — Admissibility — Evidence Act, 1950, s. 27.

In this case the appellant had been tried and convicted of the offence of having under his control fire arms. At the trial the prosecution relied on the evidence that the appellant after his arrest and interrogation had admitted burying the weapons somewhere and had offered to show the place to the police. It was argued that the evidence was inadmissible under section 27 of the Evidence Act, 1950, as it was not in the actual words used by the appellant.

Held: the statement of the appellant to the police officer that he "admitted burying the weapons and offered to show me the place" was the information supplied by the appellant that had been the cause of the proven discovery. The fact that the information was told by the police officer in the trial court in substance does not *per se* make it inadmissible, all the more so, when, as it so clearly appeared in this case, it was only in indirect speech and it was so close to the direct that there was no apparent difference.

Case referred to:-

(1) *Queen* v. *Murugan Ramasamy* [1965] A.C. 1.

The following cases were also cited in argument: *Public Prosecutor* v. *Venkata Reddi* A.I.R. 1945 Mad. 202; Chong *Soon Koy* v. *Public Prosecutor* [1977] 2 M.L.J. 78.

FEDERAL COURT.

Karpal Singh (*Y.N. Ngeow* with him) for the appellant.

Mohamed Shafee bin Abdullah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The appellant was tried and convicted on a charge under section 57(1)(a) Internal Security Act No. 82, of having under his control, without lawful excuse, literally, an arsenal — some 16 firearms of various types, all previously stolen in a daring raid on the Police Station at Peranang.

He had been arrested in connection with some other investigation and, in the usual manner, he was subjected to a series of interrogation. The interrogation was in this instance conducted by an officer who was not without some knowledge of psychology. This officer spent the first two sessions on reaching a measure of rapport with the accused and it was only at the third session that, in his words as recorded by the trial judge, "the accused admitted burying weapons somewhere and offered to show me the place."

In the events that happened, the officer promptly informed his superior officer, a police party was mounted, and with the accused, it went to the accused's fruit plantation at Kampong Gebok where he pointed at five spots on the ground — one at a time. From